

REMARKS

Reconsideration of this application, as amended, is requested.

Claims 1, 8, 12-24 and 26-28 remain in the application. Independent claims 1 and 8 have been amended to define the invention more clearly. Additionally, dependent claims 12, 13, 15 and 16 have been amended to define the invention more clearly. Claim 25 has been canceled and new dependent claims 26-28 have been added.

Counsel thanks Examiner Craig for the courtesies extended during the lengthy telephone interview conducted on April 2, 2008. The undersigned attorney for the applicants presented a proposed Amendment prior to the interview and counsel then summarized the proposed Amendment during the course of the interview. The Examiner explained that she understood the limitations presented in the claims and the arguments presented by counsel. However, the Examiner also explained that this is a very "crowded art" and that she believed that the claims would require further definition to distinguish over the prior art. For example, the Examiner stated that disposable wearing articles that had generally flat curves extending from the front to the rear of the article could be considered to meet the previously presented limitation of an "approximately" linear portion that arguably might produce a linear raised portion. The Examiner further stated that a short longitudinal section of a flat curve could be considered to include an approximately linear tangent section. The Examiner suggested that the applicants might consider defining the length of the linear portion of the primary elastic members and defining the spacing between the linear portions of the primary elastic members. The Examiner also suggested that the applicants consider amendments to the claims that would distinguish over the prior art leg elastics as shown, for example, in Popp et al. and to distinguish over the linear

portions between the leg elastics of Popp et al. The interview was very helpful but did not result in an agreement being reached. Nevertheless, the amended claims are believed to address each of the Examiner's comments and the suggestion for further definition that were offered by the Examiner.

Claims 1, 8 and 12-25 were rejected under 35 USC 103(A) as being obvious over Hermansson et al. (US 2002/0010455) considered in view of Popp et al. (US 6,635,041). The Examiner provided very detailed and helpful comments regarding the relevancy of these two references. The comments emphasized applicants use of the verb "to allow" in the claims. The Examiner emphasized that "allow" is a functional term that requires no more than the ability to perform in the manner recited under at least some conditions. The Examiner further explained that she is obligated to treat the previously presented versions of the independent claims as product by process claims that would not be limited to the manipulations of the recited steps.

Counsel appreciates the time spent by the Examiner in writing the very detailed and helpful office action. The amended independent claims no longer employ the verb "allow" but rather structurally define the location and shape of the linear raised portion and the at least one divergent raised portion contiguous to said linear raised portion.

Counsel understands the Examiner's position that "bonded" can be interpreted as implying a process step. However, "bonded" also defines a structural condition of the right and left primary elastic members, which are bonded or fixed in their stretched state to the cover sheet.

The Hermansson et al. reference has primary elastic members 11 that define front divergent portions 11a that meet "at a point 13 essentially located on the longitudinal

centerline 12 of the article" (paragraph 0017, lines 7 and 8). The elastic elements 11 of Hermansson et al. also have rear divergent portions 11c defining "a second essentially V-shaped pattern" (paragraph 0022, line 2). The two symmetric elastic members 11 further have elastic portions 11b that are "arranged starting from the peak of the first V-shaped means 11a and extend further along the longitudinal centerline 12." Thus, the longitudinal central portions 11b of the two elastic members 11 overlie one another on the longitudinal centerline 12 to extend from the front peak to the rear peak. As a result, the Hermansson et al. reference does not have the claimed primary elastic members, each of which has "a linear portion in an approximately laterally central zone of said back portion inwardly of the opposite first and second sides of the absorbent body and extending linearly in a front-to-rear direction for a distance of about 100-350 mm and keeping a substantially constant distance from the other primary elastic member in a range of about 5-50 mm such that a central zone of a skin-side surface of said absorbent body between said linear portions of said right and left primary elastic member defines a linear raised portion by an action of a contractile force in said approximately linear portions and independent of any forces exerted by a wearer." Similar limitations were added to independent claim 8. However, amended claim 8 differs from amended claim 1 in that claim 8 does not mention the leg elastics of independent claim 1. However, claim 8 does define the limitation that the absorbent body is free of elastic members between the primary elastic members. Amended independent claims 1 and 8 both define specific shapes and locations for the primary elastic members to achieve at least one divergent raised portion contiguous to the claimed linear raised portion.

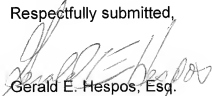
The Popp et al. reference was cited merely for its teaching of bonding elastic members in a stretched state. Deficiencies of Popp et al. were considered in detail in the reply filed on October 29, 2007. The Popp et al. reference as currently applied by the Examiner does not overcome the deficiencies of Hermansson et al. as described above. In particular, securing the Hermansson et al. plastic members in their stretched state would not produce the positively recited linear portions of each of the primary elastic members "keeping a substantially constant distance from the other primary elastic member in a range of about 5-50 mm such that a central zone of a skin-side surface of said absorbent body between said linear portions of said right and left primary elastic members defines a linear raised portion by an action of a contractile force in said approximately linear portions and independent of any forces exerted by a wearer" and with a "divergent raised portion being contiguous to said linear raised portion." Additionally, as discussed during the interview, the elastic members 58 of Popp et al. are comparable to the leg elastics recited in amended claim 1. The presence of the linear elastic members between the leg elastic members of Popp et al. would prevent the formation of the divergent raised portion and the linear raised portion that are contiguous with one another. With respect to independent claim 8, the Popp et al. existence of the linear portions between the leg elastics is inconsistent with the claim 8 limitation that the absorbent body is free of elastic members between the primary elastic members that have both linear portions and divergent portions. For these reasons, it is submitted that the invention defined by the amended claims is patentable over Hermansson et al. considered in view of Popp et al.

The Examiner will note that new claims 26-28 have been added and all depend directly or indirectly from dependent claim 14. New claim 26 defines the limitation

that the linear portion has dimensions along the front-to-rear direction that exceed a length of either of the front and rear divergent portions along the front-to-rear direction. It is believed that claim 26 distinguishes over the hypothetical prior art mentioned by the Examiner with a relatively flat continuous curved elastic member extending in a front-to-rear direction. New claim 27 defines the divergent portions of the primary elastic members as extending to the respective first and second sides of the absorbent body. New claim 28 defines the presence of the linear secondary elastic members disposed between the primary elastic members and the respective right or left side of the absorbent body. The secondary elastic members have lengths to avoid intersecting the divergent portions of the primary elastic members. The specification explains that the secondary elastic members enhance the formation of the raised portions recited in all of the claims.

In view of the preceding amendments and remarks, it is submitted that the amended and new claims remaining in the application are directed to patentable subject matter, and allowance is solicited. The Examiner is urged to contact applicants attorney at the number below to expedite the prosecution of this application.

Respectfully submitted,



Gerald E. Hespos, Esq.
Atty. Reg. No. 30,066
Customer No. 001218
CASELLA & HESPOS LLP
274 Madison Avenue - Suite 1703
New York, NY 10016
Tel. (212) 725-2450
Fax (212) 725-2452

Date: April 9, 2008